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BRODY, BENARD & BRANCH, LLP  
Attorneys for Defendants  
**AMBASSADOR CONSTRUCTION CO., INC.**  
205 Lexington Avenue, 4<sup>th</sup> Floor  
New York, New York 10016

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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**LEXINGTON INSURANCE COMPANY and TRAVELERS  
PROPERTY CASUALTY COMPANY OF AMERICA as  
subrogees of Jones Lang LaSalle Management Services, Inc.,**

**Plaintiffs,**

**-against-**

**LOCHINVAR CORPORATION, AMBASSADOR  
CONSTRUCTION CO., INC., F. DIGIACOMO & SONS,  
INC., S. DIGIACOMO & SON, INC. and MANHATTAN  
MECHANICAL SERVICE, INC.,**

**Defendants.**  
-----X

**Case No.: 07 CIV 9737  
(GBD) (THK)**

**ANSWER TO  
AMENDED  
COMPLAINT**

Defendant, AMBASSADOR CONSTRUCTION CO., INC., by their attorneys, **BRODY,  
BENARD & BRANCH, LLP**, as and for a Answer to the plaintiffs' Amended Complaint, sets  
forth as follows:

**Background**

FIRST: Denies knowledge or information sufficient to form a belief as to the truth  
of each and every allegation contained in paragraph "1" of the Amended Complaint, except  
admits this appears to be the case.

SECOND: Denies knowledge or information sufficient to form a belief as to the truth  
of each and every allegation contained in paragraph "2" of the Amended Complaint, as  
AMBASSADOR CONSTRUCTION CO., INC. was not privy to any such payments.

THIRD: Denies knowledge or information sufficient to form a belief as to the truth  
of each and every allegation contained in paragraph "3" of the Amended Complaint, and denies

responsibility for improper manufacturer, design or installation of the coupling that allegedly failed.

FOURTH: Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "4" of the Amended Complaint.

**Jurisdiction and Venue**

FIFTH: Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "5" of the Amended Complaint, except admits the amount in controversy appears to exceed \$75,000.

SIXTH: Denies each and every allegation contained in paragraph "6" of the Amended Complaint.

**The Parties**

SEVENTH: Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "7" of the Amended Complaint.

EIGHTH: Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "8" of the Amended Complaint.

NINTH: Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "9" of the Amended Complaint.

TENTH: Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "10" of the Amended Complaint.

ELEVENTH: Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "11" of the Amended Complaint.

TWELFTH: Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "12" of the Amended Complaint.

THIRTEENTH: Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "13" of the Amended Complaint.

FOURTEENTH: Admits the allegations contained in paragraph "14" of the Complaint.

FIFTHTEENTH: Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "15" of the Amended Complaint.

SIXTEENTH: Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "16" of the Amended Complaint.

**The Loss**

SEVENTEENTH: Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "17" of the Amended Complaint and refers all questions of fact to the Honorable Court.

EIGHTEENTH: Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "18" of the Amended Complaint and refers all questions of fact to the Honorable Court.

NINETEENTH: Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "19" of the Amended Complaint and refers all questions of fact to the Honorable Court.

TWENTIETH: Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "20" of the Amended Complaint.

TWENTY-FIRST: Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "21" of the Amended Complaint and refers all questions of fact to the Honorable Court.

TWENTY-SECOND: Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "22" of the Amended Complaint

and denies AMBASSADOR CONSTRUCTION CO., INC. was the general contractor at the time of the build out.

TWENTY-THIRD: Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "23" of the Amended Complaint

TWENTY-FOURTH: Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "24" of the Amended Complaint.

**AS AND FOR AN ANSWER TO THE FIRST CLAIM FOR RELIEF AGAINST  
DEFENDANT LOCHNIVAR (PRODUCT DEFECT)**

TWENTY-FIFTH: Repeats, reiterates and realleges each and every response to paragraphs "1" through "24", inclusive, of the Amended Complaint in answer to paragraph "25" of the Amended Complaint, with the same force and effect as if fully set forth herein.

TWENTY-SIXTH: Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "26" of the Amended Complaint.

TWENTY-SEVENTH: Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "27" of the Amended Complaint.

TWENTY-EIGHTH: Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "28" of the Amended Complaint.

TWENTY-NINTH: Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "29" of the Amended Complaint.

**AS AND FOR AN ANSWER TO THE SECOND CLAIM FOR RELIEF AGAINST  
DEFENDANT LOCHVINAR (FAILURE TO WARN)**

THIRTIETH: Repeats, reiterates and realleges each and every response to paragraphs "1" through "29", inclusive, of the Amended Complaint in answer to paragraph "30" of the Amended Complaint, with the same force and effect as if fully set forth herein.

THIRTY-FIRST: Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "31" of the Amended Complaint.

THIRTY-SECOND: Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "32" of the Amended Complaint.

THIRTY-THIRD: Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "33" of the Amended Complaint.

THIRTY-FOURTH: Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "34" of the Amended Complaint.

THIRTY-FIFTH: Denies each and every allegation contained in paragraph "35" of the Amended Complaint.

**AS AND FOR AN ANSWER TO THE THIRD CAUSE OF ACTION  
AGAINST DEFENDANTS F. DiGIACOMO & SONS, INC., S. DiGIACOMO  
& SONS, INC., AMBASSADOR CONSTRUCTION CO., INC.,  
and MANHATTANMECHANICAL SERVICE, INC.**

THIRTY-SIXTH: Repeats, reiterates and realleges each and every response to paragraphs "1" through "29", inclusive, of the Amended Complaint in answer to paragraph "36" of the Amended Complaint, with the same force and effect as if fully set forth herein.

THIRTY-SEVENTH: Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "37" of the Amended Complaint, and denies any duty for AMBASSADOR CONSTRUCTION CO., INC.

THIRTY-EIGHTH: Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "38" of the Amended Complaint, and denies any duty for AMBASSADOR CONSTRUCTION CO., INC.

THIRTY-NINTH: Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "39" of the Amended Complaint, denies any duty for AMBASSADOR CONSTRUCTION CO., INC.

FOURTIETH: Denies each and every allegation contained in paragraph "40" of the Amended Complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

FORTY-FIRST: The Amended Complaint fails to set forth a cause of action against defendant, AMBASSADOR CONSTRUCTION, CO., INC.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

FORTY-SECOND: The Amended Complaint against Defendant, AMBASSADOR CONSTRUCTION CO., INC., is barred by the applicable Statutes of Limitations.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

FORTY-THIRD: Plaintiffs' claim against AMBASSADOR CONSTRUCTION CO., INC., is barred by the doctrines of waiver, estoppel and laches.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

FORTY-FOURTH: Plaintiffs' claims against defendant AMBASSADOR CONSTRUCTION CO., INC., is barred to the extent that plaintiffs' payment to JLL was not reasonable.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

FORTY-FIFTH: Plaintiffs' claim against defendant, AMBASSADOR CONSTRUCTION CO., INC., is barred because plaintiffs were volunteers in making payment to JLL.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

FORTY-SIXTH: Plaintiffs' claim against defendant, AMBASSADOR CONSTRUCTION CO., INC., is barred because there is no privity of contract between plaintiff and AMBASSADOR CONSTRUCTION CO., INC.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

FORTY-SEVENTH: Plaintiffs' claim against defendant, AMBASSADOR CONSTRUCTION CO., INC., is barred because AMBASSADOR CONSTRUCTION CO., INC. owed no duty to plaintiffs.

**AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE**

FORTY-EIGHTH: That if JLL sustained injuries and/or damages, at the time and/or place and/or in the manner alleged in its Amended Complaint, said injuries and/or damages were, in whole or in part, the result of JLL's own culpable conduct, including, but not limited to, negligence, carelessness, recklessness and/or assumption of risk.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

FORTY-NINTH: By reason of the foregoing, defendant demands that the amount of any damages recovered or any judgment received by plaintiffs be reduced accordingly, pursuant to common law and CPLR § 1411, in the proportion to which the culpable conduct attributable JLL bears to the culpable conduct which caused the injuries and/or damages.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE**

FIFTIETH: If JLL has received remuneration and/or compensation for some or all of its claimed economic loss, defendant, AMBASSADOR CONSTRUCTION CO., INC., is entitled to have JLL's award, if any, reduced by the amount of that remuneration and/or compensation, pursuant to §4545(c) of the Civil Practice Law and Rules.

**AS AND FOR A ELEVENTH AFFIRMATIVE DEFENSE**

FIFTY-FIRST: The injuries and/or damages and the risks incident to the incident and/or situation mentioned in plaintiffs' Amended Complaint were open, obvious and apparent, and were known and assumed by JLL and plaintiffs' claims are barred by virtue of JLL's assumption of the risk thereof.

**AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE**

FIFTY-SECOND: Plaintiffs and JLL failed to mitigate, obviate, diminish and otherwise act to lessen or reduce the alleged injuries and damages alleged in the Amended Complaint.

**AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE**

FIFTY-THIRD: That, to the extent that the alleged damages and/or injuries of plaintiffs and JLL, if any, were caused or contributed to, in whole or in part, by intervening and superseding causative factors, the claims of plaintiffs against defendant, AMBASSADOR CONSTRUCTION, CO., INC., should be barred.

**AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE**

FIFTY-FOURTH: This Court lacks subject matter jurisdiction in that Jones Lang LaSalle Management Services, Inc., a plaintiff herein, has a principal place of business in the State of New York and complete diversity does not lie between the parties pursuant to 28 U.S.C. § 1332.

**AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE**

FIFTY-FIFTH: The plaintiff has failed to name a necessary party defendant to this action pursuant to CPLR §1001.

**AS AND FOR A FIRST CROSS-CLAIM AGAINST LOCHINVAR CORPORATION,  
F. DiGIACOMO & SON, INC., S. DiGIACOMO & SON, INC. and  
MANHATTAN MECHANICAL SERVICE, INC.**



FIFTY-SIXTH: That if JLL was caused to sustain injuries and/or damages at the time and place and in the manner set forth in the Amended Complaint through any carelessness, recklessness, negligence, acts, omissions, and/or breaches of duty and/or warranty and/or contract and/or statute, other than the JLL's own negligence, carelessness, recklessness, or other culpable conduct, said damages were sustained by reason of the carelessness, recklessness, negligence and/or affirmative acts of omission and commission including, but not limited to, breach of contract, and/or warranty and/or statute by the co-defendants, LOCHINVAR CORPORATION, F. DiGIACOMO & SON, INC., S. DiGIACOMO & SON, INC. and MANHATTAN MECHANICAL SERVICE, INC., their agents, servants and/or employees, without any negligence or other culpable conduct on the part of defendant, AMBASSADOR CONSTRUCTION, CO., INC., contributing thereto.

FIFTY-SEVENTH: That by reason of the foregoing, defendant, AMBASSADOR CONSTRUCTION, CO., INC., will not be liable to JLL or the co-defendant in the event and in the amount of recovery herein by JLL, and defendant, AMBASSADOR CONSTRUCTION, CO., INC., is entitled to indemnification from the co-defendants, LOCHINVAR CORPORATION, F. DiGIACOMO & SON, INC., S. DiGIACOMO & SON, INC. and MANHATTAN MECHANICAL SERVICE, INC.

**AS AND FOR A SECOND CROSS-CLAIM AGAINST LOCHINVAR CORPORATION,  
F. DiGIACOMO & SON, INC., S. DiGIACOMO & SON, INC.  
and MANHATTAN MECHANICAL SERVICE, INC.**

FIFTY-EIGHTH: That if JLL was caused to sustain injuries and/or damages at the time and place and in the manner set forth in the Amended Complaint through any carelessness, recklessness, negligence, acts, omissions, and/or breaches of duty and/or warranty and/or contract and/or statute, or other culpable conduct, other than the JLL's own negligence, carelessness, recklessness, or other culpable conduct, and if plaintiffs should recover a verdict or judgment against defendant, AMBASSADOR CONSTRUCTION CO., INC., defendant will be

damaged thereby, and such injuries or damages and verdict or judgment will have been brought about, caused and sustained by reason of the active and/or primary and/or affirmative carelessness, recklessness, negligence, culpable conduct and/or affirmative acts of omission and commission including, but not limited to, breach of contract, and/or warranty and/or statute and/or wrongdoing by the co-defendants, LOCHINVAR CORPORATION, F. DiGIACOMO & SON, INC., S. DiGIACOMO & SON, INC. and MANHATTAN MECHANICAL SERVICE, INC., their agents, servants and/or employees, without any negligence on the part of defendant, AMBASSADOR CONSTRUCTION CO., INC., contributing thereto or with the negligence, if any, on the part of defendant, AMBASSADOR CONSTRUCTION CO., INC., which is specifically denied, being merely passive, secondary and/or derivative in nature.

FIFTY-NINTH: By reason of the foregoing, defendant, AMBASSADOR CONSTRUCTION CO., INC., is entitled to indemnification by said co-defendants, LOCHINVAR CORPORATION, F. DiGIACOMO & SON, INC., S. DiGIACOMO & SON, INC. and MANHATTAN MECHANICAL SERVICE, INC.

SIXTY: By reason of the foregoing, if plaintiffs recover any verdict or judgment against defendant, AMBASSADOR CONSTRUCTION CO., INC., the co-defendants, LOCHINVAR CORPORATION, F. DiGIACOMO & SON, INC., S. DiGIACOMO & SON, INC. and MANHATTAN MECHANICAL SERVICE, INC., will be liable to defendant, AMBASSADOR CONSTRUCTION CO., INC., under the doctrines of apportionment, contribution and/or indemnification for the full amount of any verdict and judgment, or for a proportionate share thereof, that plaintiffs may recover against or from defendant, AMBASSADOR CONSTRUCTION CO., INC., including, but not limited to, the costs of investigation and attorneys' fees and disbursements incurred in the defense of this action and the prosecution of this cross-claim, and defendant, AMBASSADOR CONSTRUCTION CO., INC., will not be liable to the co-defendants, LOCHINVAR CORPORATION, AMBASSADOR

CONSTRUCTION CO., INC., F. DiGIACOMO & SON, INC., S. DiGIACOMO & SON, INC. and MANHATTAN MECHANICAL SERVICE, INC., in the event and in the amount of any recovery herein by the plaintiffs.

**WHEREFORE**, defendant, AMBASSADOR CONSTRUCTION CO., INC., demands judgment dismissing the Amended Complaint against it, or, in the alternative, granting it judgment over against and indemnity from co-defendants, LOCHINVAR CORPORATION, F. DiGIACOMO & SON, INC., S. DiGIACOMO & SON, INC. and MANHATTAN MECHANICAL SERVICE, INC., for all sums which AMBASSADOR CONSTRUCTION CO., INC., is held liable to plaintiffs in this action or, in the alternative, for their proportionate share of the fault resulting in plaintiffs' damages.

Dated: New York, New York  
January 22, 2008

Yours, etc.

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/S  
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